



Wisconsin Elections Commission

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Wisconsin Elections Commission
Special Teleconference Meeting
201 W. Washington Avenue, Second Floor
Madison, Wisconsin
4:15 p.m. September 13, 2022

Open Session Minutes

Present: Commissioner Marge Bostelmann, Commissioner Julie Glancey, Commissioner Ann Jacobs, Commissioner Don M. Millis, and Commissioner Robert Spindell Jr., all by teleconference.

Excused: Commissioner Mark L. Thomsen.

Staff present: Sharrie Hauge, Brandon Hunzicker, Robert Kehoe, Anna Langdon, Sara Linski, Kelly McCormick, Riley Vetterkind, John Smalley, Riley Willman, Jim Witecha, and Meagan Wolfe, all by teleconference.

A. Call to Order

Commission Chair Millis called the meeting to order at 4:37 p.m. and called the roll. Commissioners Bostelmann, Glancey, Jacobs, Spindell, and Millis were present. Commissioner Thomsen was absent. Chair Millis stated that Commissioner Thomsen was excused for his absence as he had planned to be away and noted that Commissioner Thomsen had told the Commission to proceed with the meeting in his absence, despite precedent that the Commission does not conduct a meeting without full membership in attendance.

B. Administrator's Report of Appropriate Meeting Notice

Administrator Meagan Wolfe informed the Commission that the meeting was noticed in accordance with Wisconsin's open meetings laws.

C. Discussion and Possible Action Concerning Guidance on Correcting Absentee Ballot Certificate Envelopes Following an Injunction in *White v. Wisconsin Elections Commission*

Chair Millis introduced the agenda item. He noted that a draft memo to clerks was distributed to Commissioners on September 12 and an amended memo was distributed on September 13. He added that the amended memo included a paragraph at the bottom of the first page referencing the hearing that occurred on September 13.

MOTION: The Commission adopts the amended memo sent September 13, 2022.

Wisconsin Elections Commissioners

Don M. Millis, chair | Marge Bostelmann | Julie M. Glancey | Ann S. Jacobs | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

Moved by Chair Millis. Seconded by Commissioner Bostelmann.

Discussion.

AMENDMENT: Delete “and have been withdrawn” from the third paragraph of the memo and substitute it with a period. Add the sentence, “Staff is directed to take all steps necessary to comply with the circuit court order of September 7, 2022.”

Moved by Commissioner Jacobs. Seconded by Commissioner Glancey.

Discussion.

FRIENDLY AMENDMENT: Delete “and have been withdrawn” from the third paragraph of the memo and substitute it with, “and the WEC will not publicly display or disseminate the two memoranda of October 18, 2016 and October 19, 2020.”

Proposed by Commissioner Bostelmann. Accepted by Commissioner Jacobs and Commissioner Glancey.

Discussion.

AMENDED AMENDMENT: Delete “and have been withdrawn” from the third paragraph of the memo and substitute it with, “and the WEC will not publicly display or disseminate the two memoranda of October 18, 2016 and October 19, 2020.” Add the sentence, “Staff is directed to take all steps necessary to comply with the circuit court order of September 7, 2022.”

Roll call vote: Bostelmann:	No	Glancey:	Aye
Jacobs:	Aye	Spindell:	No
Millis:	No	Thomsen:	N/A

Motion failed 2-3.

ORIGINAL MOTION: The Commission adopts the amended memo sent September 13, 2022.

See Appendix A for the language of the amended memo.

Roll call vote: Bostelmann:	Aye	Glancey:	Aye
Jacobs:	No	Spindell:	Aye
Millis:	Aye	Thomsen:	N/A

Motion carried 4-1.

D. Adjourn

MOTION: To adjourn.

Moved by Commissioner Spindell. Seconded by Commissioner Bostelmann.

Roll call vote:	Bostelmann:	Aye	Glancey:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	N/A

Motion carried 5-0.

The Commission adjourned at 5:29 p.m.

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September 13, 2022 Wisconsin Election Commission meeting minutes prepared by:

Anna Langdon, Help Desk Staff

September 14, 2022

September 13, 2022 Wisconsin Election Commission meeting minutes certified by:

Julie Glancey, Commission Secretary

November 30, 2022

Appendix A

Draft Memorandum to Clerks, Distributed September 13, 2022 (amended from the September 12, 2022 version):

DATE: September 13, 2022

TO: Wisconsin Municipal Clerks
Wisconsin County Clerks
City of Milwaukee Election Commission
Milwaukee County Election Commission

FROM: Wisconsin Elections Commission

SUBJECT: Temporary Injunction on WEC Guidance re Missing Absentee Witness Address
(*White v. Wisconsin Elections Commission*, 22-CV-1008)

In the above referenced matter, on September 7, 2022, the Honorable Judge Michael J. Aprahamian of the Waukesha County Circuit Court issued a Temporary Injunction declaring two memoranda issued by the Wisconsin Elections Commission (WEC) invalid and contrary to law. The Temporary Injunction is attached to this memorandum. The Temporary Injunction prohibits the WEC from disseminating or displaying the following memoranda:

- 1) The October 18, 2016, memorandum entitled “AMENDED: Missing or Insufficient Witness Address on Certificate Envelopes”
- 2) The October 19, 2020, memorandum entitled, “Spoiling Absentee Ballot Guidance”

The Court further prohibited WEC from providing any advice or guidance that municipal clerks or other local election officials have the duty or ability to modify or add information to absentee ballot certifications. The Court additionally prohibited from WEC from giving any advice or guidance contrary to the provision in Wis. Stat. § 6.87 that, if a municipal clerk receives an absentee ballot with an improperly completed certificate or with no certificate, the clerk may return the ballot to the elector, inside the sealed envelope when an envelope is received, together with a new envelope if necessary, whenever time permits the elector to correct the defect and return the ballot by the applicable deadline. *See* Wis. Stat. § 6.87(9).

Pursuant to the Temporary Injunction of September 7, 2022, this communication is hereby issued to give notice that the WEC memoranda of October 18, 2016 and October 19, 2020, have been declared invalid and contrary to law and have been withdrawn.

In a hearing on September 13, 2020, the Court clarified that it had not ruled on what constitutes a witness address or a missing witness address, and it had not overturned the existing WEC definition of address contained in the now-invalidated memoranda—namely, *street number, street name, and name of municipality*. The Court emphasized that its ruling was limited to invalidating any WEC guidance directing clerks to themselves add address information to witness certifications.

Please review this notice and the attached Temporary Injunction with your municipal attorney to determine if any changes to your procedures are required.

Please contact the WEC Help Desk at elections@wi.gov or by phone at (608) 261-2028 with any questions you may have. Thank you for your prompt attention to this matter.

DRAFT